which Ameritech participates as a part of the implementation of dialing parity in its states, any toll dialing parity notification should:

1. be sent by the LEC to its toll customers;
2. be sent a reasonable time prior to the date of implementation;
3. specify the implementation date;
4. describe the toll selection options; and
5. be strictly factual and carrier neutral.

The cost of any such customer notification program should be shared on a *pro rata* basis by all competitive carriers.

Ameritech also supports the Commission's proposal to make each toll carrier responsible for notifying consumers (*i.e.*, the general public) of their dialing options through their own marketing efforts. No carrier should be compelled to market the services of another carrier.[43]

II. NUMBER ADMINISTRATION

Ameritech concurs with the Commission's tentative conclusion that its *Report and Order* in the NANP Docket No. 92-237 satisfies the requirements of Section 251(e)(1) regarding designation of an impartial number administrator.[44]

---

[43] *See NPRM* at ¶ 213.

[44] *Id.* at ¶ 252 (citing *NANP Order*).

Ameritech urges the Commission to aggressively move forward with selecting a national administrator.

Ameritech also agrees with the Commission that by complying with the Commission's *NANP Order*, including nondiscriminatory assignment of NXX codes under the Industry Numbering Committee ("INC") Central Office Code (NNX/NXX) Assignment Guidelines, a LEC satisfies its duty to provide nondiscriminatory access to numbers to competing carriers.[45] In addition, the Commission should clarify that by complying with the *NANP Order*, a BOC satisfies the Competitive Checklist requirement to provide "nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers."[46]

Further, Ameritech concurs with the Commission's tentative conclusion regarding the scope of its ongoing jurisdiction over number administration in light of the 1996 Act. In particular, consistent with Section 251(e), the Commission should continue to set general national policies and principles, while leaving development of the details and implementation to the state commissions and the industry's technical and subject matter expert bodies (subject to Commission over-

---

45 *Id.*

46 47 U.S.C. § 271(c)(2)(B)(ix).

sight).[47] Accordingly, the Commission should continue to delegate implementation of new area codes to the industry and the state commissions, provided that they act consistently with established national guidelines.[48]

Finally, consistent with Sections 251(e) and 271(c)(2)(B)(ix), the Commission should delegate to Bellcore, the LECs and the state commissions the authority to continue performing each of their existing number assignment functions as they existed prior to the passage of the 1996 Act, until each function is transferred to a third party.[49] Allowing Bellcore (the existing North American Numbering Plan Administrator) and the predominant LEC in each area (the local central office codes administrators) to continue performing their designated functions will provide continuity while the third party administrator is being selected.

---

47 *NPRM* at ¶ 256.

48 *Id.* The states are in the best position to weigh the host of local technical, consumer and political factors necessary to reach an optimal decision in the time frames necessary to avert number exhaust. For a more complete discussion of these factors, *see* Ameritech Comments, CC Dkt. No. 92-237 at 5.

49 *NPRM* at ¶ 258.

III. PUBLIC NOTICE OF TECHNICAL CHANGES

A. All LECs Should Be Required To Provide Reasonable Advance Notice Of Network Changes That Impact Either Interconnection Or Interoperability.

Section 251(c)(5) of the 1996 Act requires that incumbent LECs "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks."[50] This provision is narrowly drawn to require reasonable notice of changes that impact interconnection, interfaces or the routing of traffic.

Ameritech submits that (1) the statutory definition of "services" includes "telecommunications services" and (2) "interoperability" should be defined as "the ability of two or more facilities, or networks, to be connected to exchange information and to use the information that has been exchanged."[51] In contrast, the Commission's tentative conclusion is too broad and interprets the statutory requirement to disclose "information *necessary* for transmission and routing" as applying to "*any* information in the LEC's possession that

---

50 47 U.S.C. § 251(c)(5).

51 *NPRM* at ¶ 189.

affects interconnectors' performance or ability to provide services." Such an interpretation would impose an onerous burden on LECs that far exceeds the statutory requirements of Section 251(c)(5), namely the need to ensure continuity of interconnection and interoperability between carriers. Further, excessive exchange of information between competitors is inconsistent with the operation of a competitive marketplace, raises concerns about disclosure of proprietary information, and could lead to allegations of collusion and concerted action.

Requiring incumbent LECs to provide information beyond what is "necessary" for interconnection and interoperability would also contravene the carefully tailored statutory requirement adopted by Congress. Section 251(c)(5) does not create a general duty for incumbent LECs to operate their competitors' businesses or help them market their services. Further, incumbent LECs cannot comply with a standard that requires them to make decisions based on a knowledge of their competitors' networks and services.[52] Consequently, any

---

[52] The Commission requests comment on whether it should establish safeguards to protect the proprietary interests of LECs, manufacturers and others. *See NPRM* at ¶ 194. Ameritech agrees that each carrier's proprietary information must be protected, *see, e.g.*, 47 U.S.C. § 222(b), but submits that a narrow, well-defined disclosure obligation is the most effective safeguard.

disclosure obligation should be triggered only by a new or substantively changed network interface, or a change which otherwise affects the routing or termination of traffic delivered to or from the LEC network.

With respect to the information that must be disclosed, the Commission tentatively concludes that the incumbent LEC must provide the following information: (1) dates the changes are to occur; (2) location of the changes; (3) type of changes; and (4) potential impact of the changes.[53] Once again, consistent with congressional intent, the Commission should use more precise language so it is clear that incumbent LECs are required to disclose only information regarding network changes that directly impacts interconnection and interoperability.[54] Moreover, as discussed above, the

---

[53] *NPRM* at ¶ 190.

[54] Some changes do not impact interconnection and interoperability, and therefore do not need to be disclosed at all. The information required for changes that do affect interconnection and interoperability must be driven by the type of change and should not be the same in all cases. For example, the Industry Carrier Compatibility Forum ("ICCF") has issued a document entitled "Recommended Notification Procedures To Industry For Changes In Access Network Architecture" (ICCF 92-0726-004) that recommends certain procedures and information disclosures for access network architecture changes. The procedures and information required for a new network interface would be completely different. Likewise, specific central office conversion schedules may be appropriate for changes that affect routing, but approxi-
(continued...)

Commission's rules should recognize that incumbent LECs are not experts on the operations of other carriers, and therefore should not require LECs to speculate on the "impact," let alone the "potential" impact, of changes on a competing carrier's operations.[55] Such speculation would be of little or no value and, in fact, may be counterproductive and misleading. Indeed, it would be unfair to require a LEC to incur responsibility for any disclosures that are not purely objective or that are dependent in any way on the nature of the competing LEC's network or services. At the very least, therefore, the Commission should eliminate its fourth proposed element from any notice obligation.

Finally, Ameritech agrees that disclosure should be made through industry forums and existing industry publications.[56] Existing procedures and publications can be used as a starting point, and the Commission should specially delegate to the industry sufficient flexibility to adjust existing practice to respond to changing conditions. There is no need for the Commission to completely re-invent this area, since

---

[54] (...continued)
mate timing of changes in an area is generally sufficient for a new network interface.

[55] *See NPRM* at ¶ 190.

[56] *Id.* at ¶ 191.

the Commission clearly can rely on well-established industry practices as the preferred means of implementing the statutory public notice requirements.

B. Advance Notice Of Network Changes Should Be Provided In Accordance With The Commission's Existing All Carrier Rule.

Section 251(c)(5) of the 1996 Act essentially codifies the Commission's existing "All Carrier Rule," which requires that all carriers "disclose, reasonably in advance of implementation, information regarding any new service or change in the network."[57] The All Carrier Rule has proven effective in regulating the interconnection of networks among carriers. Since there is no evidence that existing industry practices under the All Carrier Rule are not working or are otherwise producing network conflicts or hardships, the Commission should allow the industry to continue to manage this area. For these same reasons, the Commission should not implement any additional enforcement mechanisms to ensure compliance with the public notice requirement of Section 251(c)(5).[58] Thus, in implementing this requirement, the Commission need only reiterate the All Carrier Rule.

---

[57] *See* Competition in the Interstate Interexchange Marketplace, *Report and Order*, 6 FCC Rcd 5880, 5911 n.270 (1991).

[58] *See NPRM* at ¶ 193.

Consistent with the All Carrier Rule, the Commission should not mandate an overly rigid disclosure timetable (*e.g.*, the disclosure timetable from the *Computer III* proceeding) that fails to take into account the unique circumstances of each carrier.[59] For example, requiring disclosure of network changes at the "make/buy" decision point and technical information at least 6 to 12 months in advance can have the unintended effect of stifling innovation and delaying new interconnection arrangements and services to the detriment of customers. Further, although appropriate for fostering the disclosure of information relating to enhanced services, the implementation of a *Computer III*-type disclosure schedule is unnecessary to encourage competing carriers to maintain interconnection and interoperability among networks. Carriers have a common interest in assuring that interconnection arrangements function properly -- an interconnection arrangement affects the service provided by both carriers and thus each carrier's reputation is at stake. Consequently, the Commission should simply require that the industry continue to uphold its responsibility under the flexible All Carrier Rule.

Moreover, the Commission need not be the repository for either references to the technical information or the

---

[59] *See id.* at ¶ 192.

technical information itself.[60] Requiring carriers to submit such information to the Commission would not serve any valid purpose and would be extremely burdensome for both the industry and the Commission. Existing public notice vehicles will inform the industry that the information exists and that interested parties can contact the carrier in question to receive the details.[61]

C. The Notification Requirement Of Section 251(c)(5) Should Correspond With Similar LEC Obligations Set Forth Elsewhere In The 1996 Act.

Ameritech agrees with the Commission that the notification requirement of Section 251(c)(5) should be reconciled with related obligations set forth in Section 256 and Sections 273(c)(1) and (c)(4) of the 1996 Act.[62] Section 251(c)(5) is only one part of the overall regulatory structure for coordinating network planning by the industry to facilitate interconnection and interoperability. As such, the notification obligations should extend to both new and incumbent LECs under Section 256. The stated purpose of Section 256 is to promote "effective and efficient interconnection of public telecom-

---

60 *Id.* at ¶ 191.

61 The Commission should not adopt any new or additional public notice or information disclosure requirements to supplement the existing process.

62 *NPRM* at ¶ 191.

munications networks" by establishing procedures to effectuate "coordinated network planning by telecommunications carriers."[63] The industry, through the Network Reliability Council, can establish the broad outlines necessary to accomplish this purpose. Consistent with this underlying purpose of technical notification, the information required to be disclosed pursuant to Section 251(c)(5) should be limited to that information which is necessary to achieve cooperative interconnection planning and to assure continued interoperability between LECs.

IV. ALL LECs SHOULD BE REQUIRED TO PROVIDE ACCESS TO POLES, CONDUITS AND RIGHTS-OF-WAY

Section 251(b)(4) of the 1996 Act requires that each LEC "afford access to the poles, ducts, conduits and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224." Likewise, Section 271(c)(2)(B)(iii) requires a BOC to provide "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224." In accordance with the "whole statute" principle of statutory inter-

---

[63] 47 U.S.C. § 256(b)(1).

pretation, the Commission should interpret Sections 251(b)(4) and 271(c)(2)(B)(iii) in harmony with Section 224.[64]

Section 224(f)(1), as modified by the 1996 Act, requires that a utility shall provide a "cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, or right-of-way owned or controlled by it."[65] Further, Section 224(c)(1) provides that the Commission does not have jurisdiction over the rates, terms and conditions of access where such matters are regulated by the states. Thus, under the 1996 Act, the Commission should recognize that states continue to have jurisdiction over the specific rates, terms and conditions of access to poles and conduits.

Thus, when Sections 251(b)(4) and 224 are read together, it is clear that the Commission is authorized to adopt general rules requiring that all LECs provide nondiscriminatory access to poles, conduits and rights-of-way they own or control, but that it should not specify the rates, terms and conditions of that access. The Commission can avoid the delay, confusion and cost that would arise from re-invent-

---

64 *See supra* note 11.

65 Section 224(b)(1) also requires such access to be provided on rates, terms and conditions that are "just and reasonable."

ing these arrangements. Access to poles and conduits has been successfully negotiated by LECs at the state level for many years. The Commission and the states can build upon these existing arrangements as the basis for implementing the 1996 Act.

For purposes of Section 224(f)(1), the Commission should clarify that "nondiscriminatory access" requires that a LEC provide access that is nondiscriminatory among cable television systems and other telecommunications carriers.[66] As discussed above, when Congress intends to create a requirement that a service or facility be provided on the same basis to other carriers as the carrier provides it to itself, it adopts an unambiguous provision to that effect.[67] Since Section 251(b)(4) does not contain any reference to the access that a LEC provides to itself or its affiliates,[68] the most logical interpretation is that this provision simply requires LECS to provide access to poles, conduits and rights-of-way that is nondiscriminatory between unaffiliated carriers.

---

66 *See NPRM* at ¶ 222.

67 *See* discussion *supra* at part I(B)(2).

68 However, nondiscrimination provisions contained in Sections 272 and 274, as well as other specific rules or orders relating to such affiliates, would control those relationships.

In addition, the provisions of Section 224 support this conclusion. The only "parity" requirement in this section is contained in Section 224(g), which provides that a utility providing telecommunications services or cable services must "impute to its costs of providing such services (and charge any affiliate, subsidiary, or associated company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section." Therefore, the only nondiscriminatory obligations applied to LECs under Section 224 are those that relate to the charges for access.

Moreover, in accordance with the general usage of the term "nondiscrimination" in the 1996 Act, a cable television system or telecommunications carrier need only be afforded the opportunity to gain access to a LEC's facilities on comparable terms, conditions and rates as other cable television systems or telecommunications carriers.[69] Consistent with general nondiscrimination principles, the rates, terms and conditions of access may vary between carriers, provided that any such variation is based on the application of uniform reasonable criteria available to all requesting parties. Because the principles regarding nondiscrimination are fully

---

[69] *See supra* part I(B)(2).

developed and well understood, there is no reason for the Commission to adopt detailed rules to implement this requirement of Section 251(b)(4).

With respect to access to LEC (or other utility) space by unaffiliated cable system operators and telecommunications carriers, the Commission should adopt a general presumption that such space is available in the structure. This general presumption would be subject to two major exceptions, as to which the LEC (or other utility) would bear the burden of proof. The first such exception relates to space required by the LEC or utility to provide sufficient capacity for its own existing and planned uses. The second exception relates to the denial of access for reasons of safety, network reliability and engineering concerns. Any denial of access on either of these two grounds would require written support stating with particularity the basis for such denial. Disputes regarding such denials should be handled via existing complaint procedures in the appropriate jurisdiction.

Thus, if the Commission is inclined to adopt an access requirement, a LEC should be required to make available only that space which it does not reasonably require to provide its existing and planned services, including reasonable additional space required for safety, maintenance, and fore-

seeable demand. The Commission should clarify that the LEC constructing the pole, duct or conduit will have first right to use its own facilities to meet its projected customer demand. A contrary conclusion would create a disincentive to construct such facilities and jeopardize a carrier's ability to plan for the future needs of its customers.

The Commission requests comment on whether it should adopt specific standards for determining when sufficient capacity exists.[70] The issuance of such standards by the Commission is unnecessary and likely to do more harm than good. Over the years, the industry has developed local procedures for allocating space that have met the test of time. These procedures and standards can continue to be used.

Likewise, LECs must be allowed to consider safety, reliability and engineering concerns in determining whether to provide access to space.[71] It would be irresponsible to interpret the 1996 Act as leaving states and carriers powerless to protect the safety of the public and their employees and to maintain the reliability of their networks. Public safety and network reliability concerns are generally addressed by requiring connecting cable systems or telecommunications carri-

---

70 *NPRM* at ¶ 223.

71 *Id.* at ¶ 222.

ers to comply with applicable state or municipal rules and standards, and by following and applying generally accepted engineering standards such as those contained in the National Electric Safety Code. The Commission need not adopt new rules since state public safety requirements have been in place for many years and have permitted access to millions of poles and conduits without jeopardizing either safety or network reliability.

Further, the Commission should clarify that a LEC's duty to provide access to its rights-of-way applies only to the extent that the LEC has the legal authority to confer access to a third party, either through ownership or control. A LEC should not be required to provide access to rights-of-way where, for example, a city, state or private entity has legal control, or where the LEC's rights or interests are not assignable or licensable. To require otherwise would impose a legal impossibility, which Congress could not have intended.

The Commission next asks if it should establish requirements regarding the manner and timing of notice of changes to poles and conduits sufficient to enable a connecting party with a "reasonable opportunity" to add or modify its attachment.[72] The manner and timing of notice in any particu-

---

[72] *Id.* at ¶ 225.

lar case again depends upon local factors such as the specific facility, the attachment, and the nature, extent and reason for the change. For example, a rigid notification requirement for unplanned changes could deny to carriers the ability to promptly respond to emergency situations. Modification and replacement of existing structures is required for a number of reasons, including damage, deterioration, technological change, public works projects, and growth in demand. As such, the time frames necessary to respond to these circumstances vary widely and can often require expedited action to safeguard public safety and to preserve or restore service. For these reasons, Ameritech opposes a hard and fast rule because it may impose unnecessary delays and complications in the expansion, enhancement, maintenance, or repair of facilities while the LEC waits out an arbitrary notice period.

Finally, the Commission asks whether it should adopt rules regarding the "appropriate allocation" of the costs of additions and modifications to poles and conduits.[73] In light of the wide variation in the nature and circumstances of modifications and changes to poles and conduits, and the number of parties that may be involved, the Commission's

---

[73] *Id.* at ¶ 225.

promulgation of rules that can adequately address all situations is infeasible.

CONCLUSION

The Commission's implementation of Section 251's dialing parity, number administration, notice of technical changes and access to rights-of-way requirements should be consistent with the express provisions and underlying purpose of the 1996 Act. As contemplated by Congress, the Commission should adopt broad rules that give the industry and the states flexibility to respond to local conditions. Most importantly, the Commission should build upon existing arrangements at the state level that fully meet the requirements of the 1996 Act.

Respectfully submitted,

AMERITECH

By: Antoinette Cook Bush (RAH)
Antoinette Cook Bush
Jay L. Birnbaum
Jeffry A. Brueggeman

Skadden, Arps, Slate,
Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7230

Thomas P. Hester
Kelly Welsh
John T. Lenahan
Larry Peck
Frank Michael Panek

Ameritech
30 South Wacker Drive
Chicago, IL 60606
(312) 750-5367

Dated: May 20, 1996